

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition Nos. 5522 to 5525 of 2003
and

W.P.M.p.Nos.5600 to 5603 of 2005

Coimbatore District Powerloom Cloth
Dealers' Association rep.by its
President (Reg.No.22/1983)
No.34, Balaji Complex
Binny Compound, Tirupur 641 601. ... Petitioner in W.P.5522 of 2003

Somanur Powerloom Cloth
Manufacturers' Association
rep. by its Secretary
Reg.No.43/1987
No.190/2, Senthil Nagar
Somanur-641 668. ... Petitioner in W.P.No.5523 of
2003

Palladam Taluk Powerloom Textile
Traders' Association
rep.by its Secretary
Reg.No.14/1992
Kongu Velalar Thirumana Mandapam
Trichy Road, Palladam 641 664
Coimbatore District. ... Petitioner in W.P.No.5524 of 2003

Avinashi Cloth Manufacturers'
Association, rep.by its Secretary
Reg.No.0178/2001
No.42, C.K.Complex West Car Street
Opp.State Bank, Avinashi 641 654 .. Petitioner in W.P.No.5525 of 2003

vs

1. The District Collector
Coimbatore District.
2. The Joint Commissioner of Labour
Coimbatore.
3. The Revenue Divisional Officer
Tirupur
Coimbatore District.

4. Kovai Mavatta Koolikku Nesavu
Seyyum Visaihari, Urimaiyalar
Sangangalin Kootamaippu
Regn.No.136/1991
rep.by its President, Power House Road
Somanur 641 668, Coimbatore District. ..Respondents in all the W.Ps.

For petitioners : M/s. R. Kamalarani

for Mr.R.G.Narendhiran

For respondents : Mr.V.R.Thangavelu GA for R1 to R3
Mr. J.Antony Jesus for R4

Proposed Impleading
party in WPMP's : Mr. K. Srinivasamurthy
for Row & Reddy.

C O M M O N O R D E R

Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 1 to 3 from interfering with the rights of the members of the petitioner Association to fix the charges payable for the weaving done on job works by powerloom owners or in any manner compelling them to enter into any settlement/arrangements for the purpose of fixing uniform charges for the weaving job work as they are individual contracts, entered into between the members of the petitioner association and the respective powerloom owners.

2.Heard the learned counsel for the petitioner as well as for the respondents.

3. The facts and circumstances leading to the above writ petitions and the prayers being similar in nature, a common order is passed in all these writ petitions.

4.The brief facts of the case, as stated by the petitioners, are as follows:-

It is submitted on behalf of the petitioner associations that they are registered associations, registered under the provisions of the Tamil Nadu Societies Registration Act,1975. The associations have been formed for the purpose of protecting the interests of its members, more particularly, in matters pertaining to their business activities, such as price fixation and marketing. The members of the petitioner associations are traders or manufacturers who purchase yarn from various spinning mills. The yarn purchased by the members are of two types viz., warp yarn and weft yarn. The warp yarn purchased by the members are handed over to sizing mills, on job work basis, for the purpose of sizing the warp yarn. After the sizing process is over, the sized warp yarn beams are taken back from the sizing mills and handed over to the powerloom owners, along with

weft yarn, for being weaved into grey fabrics. The powerloom owners are the members of the fourth respondent association carrying on the process of weaving, on job work basis, from the traders and manufacturers who are members of the petitioner federation. The sized warp yarn and the weft yarn are properties of the respective members of the petitioner federation, which are handed over to the powerlooms only for the purpose of weaving. The ownership of the yarn continues to remain with the members of the petitioner federation and the powerlooms are paid on job work basis, depending upon the nature of the fabric which has to be weaved. Thus, the activities of the members of the petitioner associations are, in effect, individual contracts, purely within the realm of private law field. No governmental agency can exercise any control over such individual contracts given for carrying out job works. Since the spinning mills, including the Co-operative spinning mills, in the state of Tamil Nadu have been facing a severe recession, they were unable to pay the cotton suppliers and the government was compelled to issue notifications under the various enactments to protect the spinning mills from being penalized for non-fulfillment of their contractual obligations. The price of yarn was fluctuating and consequently, the price fixed for the job work, such as sizing or weaving, was also fluctuating depending upon market conditions.

5. It is submitted that some of the members of the fourth respondent association, who are powerloom owners, have also conducted trading and manufacturing activities like that of the members of the petitioner associations and therefore, the Powerloom Owners cannot be termed as work force and none of the labour welfare legislations would apply to them, including the Industrial Disputes Act, 1947.

6. It is stated that the members of the fourth respondent association had compelled the members of the petitioner association to appear before the first respondent for the purpose of arriving at a settlement, as regards the charges payable for the weaving activities done by the powerloom owners. Even though the respondents 1 to 3 have no jurisdiction to interfere or having any control with regard to the individual contracts, the first respondent, unilaterally, by his proceedings, dated 14.02.2000, had ordered that the members of the petitioner associations have to pay 18% increased charges and in respect of certain categories of fibres the charges have to be paid at the increased rate of 20%. The said proceedings of the first respondent is patently without jurisdiction. The members of the petitioner associations deal in various types of fabrics and they have individual tie-ups with powerloom owners and each of such job works entrusted to the powerloom owners is an individual contract and the rates are mutually agreed upon between the members of the petitioner associations and the powerloom owners, who are the members of the fourth respondent association. By no stretch of imagination, the contracts were falling within the ambit of the Industrial Disputes Act, 1947, as there is no master-servant relationship and it is not a matter pertaining to employment or the terms of employment. Therefore, the action of the respondents 1 to 3, in compelling and threatening the petitioner associations to come for negotiations, is wholly without

jurisdiction and is illegal in the eye of law, as it would also be contrary to Article 14 of the Constitution of India. In spite of several oral representations, the respondents 1 to 3 and their officials have been constantly threatening the members of the petitioner associations, with a view to compel them to enter into an arrangement with the powerlooms owners. On receipt of the letter, dated 13.01.2003, from the fourth respondent, there is constant official pressure on the petitioner associations to agree for enhanced rates for the job works. Therefore, the petitioner associations have been constrained to come before this Court by way of filing the writ petitions.

7. In the counter affidavit filed on behalf of the second respondent it has been stated that as per G.O.Ms.No.106, dated 25.07.2001, of the Labour and Employment (D2) Department of the Government of Tamil Nadu, the second respondent has been appointed as one of the Conciliation Officers, under Section 4 of the Industrial Disputes Act, 1947, to settle the industrial disputes arising in the State of Tamil Nadu. The nature of transactions between the members of the petitioner associations and the members of the fourth respondent association, as well as the nature of payments made by the petitioner associations to the members of the fourth respondent association are well within the purview of the Industrial Disputes Act, 1947. Therefore, any dispute or difference falling under Section 2(K) of the Industrial Disputes Act, 1947, could be dealt with by the second respondent, as contemplated by law. The second respondent, as a conciliation officer, is expected to function under the authority of the Industrial Disputes Act, 1947, and under the power vested in him by the provisions of the Tamil Nadu Industrial Disputes Rules, 1958. The second respondent has been acting in good faith in the discharge of the functions contemplated by law and as prescribed by the provisions of the Industrial Disputes Act, 1947. The petitioner associations and their members are not in a position to show as to in what manner and to what extent such exercise of powers and duties by the second respondent have been wrongly exercised against them. In such circumstances, the reliefs sought for in these writ petitions cannot be granted. Therefore, the petitioner associations and its members cannot be taken to be aggrieved, at this stage. Therefore, the writ petitions cannot be maintained on mere apprehensions and the respondents cannot be prevented from discharging their official duties in accordance with law.

8. On a perusal of the records placed before this Court, it is seen that an invitation has been extended by the communication, dated 1.3.2000, to the petitioner associations to come for talks for a negotiated settlement, with regard to the situation that has arisen due to the strike in work in the powerloom industry.

9. It is seen that the sole apprehension of the members of the petitioner associations is that they will be compelled to enter into a compromise or a formal settlement which will prejudice their interests. But there is nothing shown by the petitioner associations as to the

circumstances under which they would be prejudiced and in what manner harm would be caused to them. This Court normally does not interfere with mere apprehensions and that too when the apprehensions are with regard to the action of the respondents 1 to 3, who are highly ranked and responsible government officials, namely, the District

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Collector, the Joint Commissioner of Labour and the Revenue Divisional Officer, Tirupur, while discharging their official duties. However, it is made clear that if the members of the petitioner associations have any objections or reservations, with regard to the issues involved in the proposed talks, it will be always open to them to raise them at the relevant point of time, in the manner known to law. Therefore, in the said circumstances, the writ petitions are dismissed. In the impleading petitions, no orders are necessary and hence, the impleading petitions are also dismissed. No costs.

kvsg

Sd/-
Assistant Registrar,

/ture copy/

Sub Assistant Registrar.

To

1. The District Collector
Coimbatore District.
2. The Joint Commissioner of Labour
Coimbatore
3. The Revenue Divisional Officer
Tirupur
Coimbatore District.

+ One cc to Mr. R.G.Narendhiran Advocate SR 49309
+ One cc to Mr. J. antony Jesus Advocate SR 49444
+ One cc to the Govt Pleader SR 49753
+ One cc to M/s Row and Reddy Advocates SR 49504

MS (co)
sg 16/2/07

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